

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MARCUS AUSLER, )  
Plaintiff, )  
v. )  
PAUL HOPGOOD, et al., )  
Defendants. )

No. 4:21CV00644 JAR

## **MEMORANDUM AND ORDER**

This matter comes before the Court on Plaintiff Marcus Ausler's Motion to Appoint Counsel [ECF No. 43]. For the following reasons, Plaintiff's Motion will be denied.

In civil cases, a pro se litigant does not have a constitutional or statutory right to appointed counsel. *Ward v. Smith*, 721 F.3d 940, 942 (8th Cir. 2013). Rather, a district court may appoint counsel in a civil case if the court is “convinced that an indigent plaintiff has stated a non-frivolous claim...and where the nature of the litigation is such that plaintiff as well as the court will benefit from the assistance of counsel.” *Patterson v. Kelley*, 902 F.3d 845, 850 (8th Cir. 2018). When determining whether to appoint counsel for an indigent litigant, a court considers relevant factors such as the complexity of the case, the ability of the pro se litigant to investigate the facts, the existence of conflicting testimony, and the ability of the pro se litigant to present his or her claim. *Phillips v. Jasper Cty. Jail*, 437 F.3d 791, 794 (8th Cir. 2006).

After reviewing these factors, the Court finds that the appointment of counsel is not warranted at this time. Plaintiff has demonstrated, at this point, that he can adequately present his claims to the Court. For instance, on January 11, 2023, Plaintiff filed a summary judgment motion [ECF No. 28]. On March 10, 2023, Plaintiff filed his response in opposition to Defendants' summary judgment motion [ECF No. 36], and his response to Defendants' statement of material facts [ECF No. 37].

Additionally, neither the factual nor the legal issues in this case appear to be complex. The Court also notes that Plaintiff has previously filed two motions for appointment of counsel, which the Court denied, and he has not presented any new facts since the filing of those motions [ECF Nos. 3 and 15].

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's Motion to Appoint Counsel [ECF. No. 43] is **DENIED**.

Dated this 21st day of June, 2023.



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JOHN A. ROSS  
UNITED STATES DISTRICT JUDGE